



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,172	12/02/2003	Roger H. Hamilton	998_001CIP	4133
20874	7590	07/31/2006	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			YIP, WINNIE S	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,172

Applicant(s)

HAMILTON ET AL.

Examiner

Winnie Yip

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 8-13 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5 and 8-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to applicant's amendment filed on May 12, 2006.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: the claimed priority data is incorrect. The filing date of the prior application 10/037,207 should be January 4, 2002 but not January 7, 2002.

Claim Objections

2. Claims 4-5 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In these claims, the claimed subject matters of "said first orthopedic appliance" and "said second orthopedic appliance" fail to further limit the subject matter of the previous claim 1 because these first and second orthopedic appliances are not positively claimed. They are recited for intended use only and they are not considered as part of the claimed invention.

Art Unit: 3636

3. Claim 1 is objected to because of the following informalities: the term “plastic peripheral insert” lacks a proper antecedent basis. It should read “a plastic peripheral insert”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains a subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The specification fails to define “the open-top flexible bag-line container including an upper mouth portion including a plastic peripheral insert” as claimed. The specification as originally filed only define the upper mouth section 118 that “includes a peripheral plastic reinforcement section” but does not define there is “a plastic peripheral insert” as claimed now. The new matter must be cancelled.

Claims 1 and 11 **are treated on merit** to include limitation of “an upper mouth portion including a peripheral plastic reinforcement section” as defined in the specification.

6. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The language “is looped around a portion of a upper support portion of a

Art Unit: 3636

wheelchair” is confusing whether applicant attempts to claim an oxygen bottle carrier in combination with a wheelchair. If yes, the wheelchair must be positively cited. If not, the strap of the carrier should be cited functionally relative to the wheelchair only. For example, change “is looped” to “is adapted to be looped”. Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. Claims 1, 5 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Locarno (US Patent No. 5,288,001) in view of Conte (US Patent No. 6,634,531) and Hebert et al. (US Patent No. 5,839,631).

Locarno shows and discloses a carrier for retaining an oxygen bottle to an appliance such as a wheelchair, the carrier comprising a flexible open-top container (2) being capably used for maintaining a close fitting relationship with an oxygen bottle, the container including an upper mouth made of at least partially from a stiff material that enable the oxygen bottle to be located therein vertically, a flexible strap (18, 20) having a central portion being connected to and adjacent to an opening of the container to increase rigidity of the opening of the container (2) to provide a flexible upper bottle retaining portion for preventing the bottle from falling out of the carrier as claimed, a pair of upper stabilizing straps (10, 12, 18, 20) extending from respective sides of the upper bottle retaining portion of the container, each pair of upper strap ends including a snap-fitting buckle portion (22) at one of the ends and a second strap end with a second part of buckle (14) to provide a first retaining means for being looped around a portion of an appliance and being attached to the other buckle portion of the upper strap pair ends via an adjustable and releasable buckle connection, and a pair of lower stabilizing straps (26, 28)

Art Unit: 3636

extending from respective sides of the lower portion of the container, each strap having a loop for providing a second retaining means for engaging the bottom of the carrier with the legs of the appliance. Locarno does not define the pair of lower stabilizing straps including a strap end having hook and loop fasteners on each side of the strap end as claimed. Conte teaches a carrier (40) capably used for retaining an oxygen bottle (see Figs 4 and 8), the carrier (40) comprising a flexible open-top container (48), a pair of upper straps (44) extending away from opposite sides of the upper portion of the container, and a pair of lower straps (42) extending away from opposite sides of the lower portion of the container, the lower straps each having a strap end including hook and loop fasteners (43) on each side of each strap end to enable each of the lower straps being selectively looped for attaching the carrier to a vertical portion of an appliance such as a crutch or a walker. Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify the carrier of Locarno having the pair of lower straps having hook and loop fasteners on each side of the strap end to enable selectively looped around a lower portion of the orthopedic appliance and fastened upon its as taught by Conte for selectively and securely attaching the lower portion of the straps of the carrier to a suitable supported portion of the appliance. Locarno further does not define the upper mouth portion including a peripheral plastic reinforcement portion allowing an oxygen bottle being loaded vertically therein as claimed. Hebert et al. teach a carrier comprising a container (12) having an mouth portion (16 or 18) including a sleeve (25) stitched along the upper peripheral of the mouth portion, an elastic strip (28) being inserted into the sleeve to provide a peripheral plastic reinforcement portion for increasing a flexibility of the mouth of the container to enable vertically insertion of an article and a drawstring (24) may inserted through

Art Unit: 3636

the channel to provide a flexible retaining portion for selectively reduce the diameter of the mouth. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the carrier of Locarno combined with Conte having the mouth portion having an elastic strip being provide within a sleeve to provide a peripheral plastic reinforcing section and a drawstring passed therethrough the sleeve to provide a flexible upper bottle retaining portion as taught by Hebert et al. for reducing opening of the container to retain a bottle inside of the container.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Locarno '001 in view of Conte '531 and Hebert et al. '631 as applied to claim 1 above, and further in view of Sanders (US patent No. 5,154,331).

Locarno and Conte and Hebert et al. teach all limitations of the claimed invention as explained and applied set forth above rejections except that Locarno and Conte and Hebert et al. do not define the carrier having an additional means for retaining personal items. Sanders teaches a carrier used for a wheelchair, the carrier (10) having an elongated cylindrical container (48) capably for retaining an oxygen bottle, and a pocket formed on a front surface of the container for retaining personal items (63). It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the carrier of Locarno combined with Conte and Hebert et al. having a pocket mounted on a surface of the carrier as taught by Sander for easily retaining personal items when use the appliance such as the wheelchair.

Allowable Subject Matter

9. Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed on May 12, 2006 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

Art Unit: 3636

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Winnie Yip
Primary Examiner
Art Unit 3636

wsy
July 21, 2006